



## H.R. 50 — Unfunded Mandates Information and Transparency Act of 2017 (Rep. Foxx, R-NC)

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### FLOOR SCHEDULE:

Scheduled for consideration on July 13, 2018, under a structured [rule](#). The rule makes in order four amendments, which are described below.

The rule also provides for consideration of H.R. 3281, the Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act.

### TOPLINE SUMMARY:

[H.R. 50](#) would reauthorize the United Mandates Reform Act of 1995 (UMRA), provide more transparency for the effects federal regulations have on the private sector, require independent regulatory agencies to comply with UMRA, allow a chairman or ranking member to request a retrospective analysis of an existing federal regulation, and allow for judicial review of regulatory actions that do not comply with UMRA

### COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 50 would have a net discretionary cost of \$6 million over the 2019-2023 period. Pay-go would apply but net changes in direct spending would not be significant.

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

According to [CBO](#), “The federal government, through laws and regulations, sometimes imposes requirements—known as federal mandates—on state, local, and tribal governments and entities in the private sector to achieve national goals. In 1995, lawmakers enacted the [Unfunded Mandates Reform Act](#) (UMRA) in part to ensure that, during the legislative process, the Congress receives information about the potential effects of mandates as it considers proposed legislation. To that end, UMRA requires the Congressional Budget Office, at certain stages in the legislative process, to assess the cost of mandates that would apply to state, local, and tribal governments or to the private sector.” Additional information from CBO about UMRA can be found [here](#).

H.R. 50 would require the director of the Congressional Budget Office (CBO) to conduct an assessment comparing a bill's authorized level of funding to the prospective costs of carrying out changes to a condition of federal assistance being imposed on state or local governments, at the chairman or ranking member's request.

The bill would amend the definition of direct cost, codified under [2 U.S.C. 658](#), as it applies to federal private sector mandates. Current law only includes the amount the private sector would be required to spend. The bill would expand this definition to include a loss in profits, and include costs passed on to the consumer, taking behavioral changes into account. The bill would also expand the definition of agency to include independent regulatory agencies, except for the Board of Governors of the Federal Reserve System, the Federal Open Market Committee or the Consumer Financial Protection Bureau.

The bill would transfer the Unfunded Mandates Reform Act (UMRA) responsibilities from the Office of Management and Budget to the Office of Information and Regulatory Affairs (OIRA).

The bill would add a point of order to private sector mandates unless budgetary expenses are allocated.

The bill would require each agency to assess the effects of federal regulations on state and local governments, and the private sector according to the following principles: (1) each agency must identify the problem that is being addressed and its significance; (2) each agency must examine if existing regulations have created or contributed to the problem and whether or not those regulations should be modified; (3) each agency must identify alternatives to direct regulation; (4) if the agency determines regulation is the best method, the regulation must be designed in the most cost effective manner; (5) each agency must assess the costs and benefits of the regulation and only adopt regulations in which the benefits justify the costs; (6) each agency must base its decisions on the best reasonably obtainable scientific information related to the regulation; (7) each agency must identify alternative forms of regulations and must specify performance objectives; (8) each agency must avoid regulations that are inconsistent or duplicative of the agency's own regulations or regulations from other agencies ; (9) each agency must tailor regulations to minimize the cumulative impact of the cost of regulations; and, (10) each agency must draft regulations in simple, easy to understand language.

If a proposed or final rule may result in an annual effect exceeding \$1 million in any one-year period, the bill would require agencies to prepare a written statement that contains: (1) the text of the draft proposed or final rule with a detailed description of the need for the rule; (2) an assessment of the potential costs and benefits; (3) a qualitative and quantitative assessment of benefits; (4) a quantitative and qualitative assessment of costs; (5) estimates of future compliance costs and disproportionate budgetary effects; (6) a detailed description of the agency's consultations with the private sector and elected representatives; and, (7) an assessment of the effects on property owners. According to the committee [report](#), under current law agencies were circumventing the requirement to provide an analysis by not submitting a notice of proposed rulemaking. The GAO has [estimated](#) that agencies did not submit a notice of proposed rulemaking for 35 percent of major regulations enacted between 2003 and 2010. The bill would close this loophole.

The bill would require agencies to allow the private sector to provide input in the development of regulatory proposals containing significant federal mandates. The bill would codify the following guidelines: (1) consultations must take place as early as possible and be integrated through the process; (2) agencies must consult with a wide variety of state and local governments and the private sector; (3) agencies must estimate costs and benefits to assist with the consultations; (4) agencies must seek the views of state and local government and the private sector on costs, benefits, and risks, and solicit alternative methods of compliance and potential flexibilities; (5) consultations must address the cumulative impact of entities on affected agencies; and, (6) agencies may accept electronic submissions, but may not use those comments as the sole method of satisfying these guidelines.

The bill would require OIRA to determine if an agency's regulation necessitates a written statement under this section. If an agency is not in compliance, OIRA must notify the agency and request compliance before the regulation is finalized. The bill would require OIRA to submit an annual report to congress detailing each agency's compliance, including activities taken to improve compliance.

The bill would require agencies to complete a retrospective analysis of a federal regulation, at the request of the chairman or ranking member. The analysis must include a report to Congress and the GAO that contains a copy of the regulation, the continued need for the regulation, the nature of comments or complains in respect to the regulation, the extent to which the regulation conflicts or is duplicative with federal, state or local regulations, the degree to which changes have occurred in the regulated area, an analysis of the retrospective costs and benefits of the regulation, and a description of history of litigation.

The bill would extend judicial review to determine an agency's choice of least costly, most cost-effective, or least burdensome alternative to a regulation. The bill would also allow a court to stay, enjoin, or invalidate rules if the agency has not completed the required UMRA analysis.

The bill would reauthorize the United Mandates Reform Act of 1995 and authorize \$1.5 million to be appropriated for each fiscal year beginning in 2018, through 2024.

The report accompanying H.R. 50 (H. Rept. 115-798) can be found [here](#).

#### **AMENDMENTS MADE IN ORDER:**

1. [Watson Coleman \(D-NJ\)](#) – The amendment would strike section five of the underlying bill, which requires would subject independent regulatory agencies, except for the Board of Governors of the Federal Reserve System, the Federal Open Market Committee or the Consumer Financial Protection Bureau, to UMRA.
2. [Raskin \(D-MD\)](#) – The amendment would require private sector consultation records and private sector comments, in regards to a significant federal mandate, to be posted on the agency's website within five days.
3. [Vargas \(D-CA\)](#) – The amendment would strike section eleven of the underlying bill, which would require OIRA to determine if an agency's regulation necessitates a written statement.
4. [Connolly \(D-VA\)](#) – The amendment would sunset UMRA and Congressional Budget Act if the real gross domestic product fails to increase at an average of at least 5 percent for the first 4 calendar quarters after enactment.

*Some conservatives may be concerned this amendment could result in a full repeal of the process that allows Congress to establish a budget and spending levels, without providing a replacement. Some conservatives may also be concerned this would result in reduced transparency in regards to fiscal spending.*

#### **COMMITTEE ACTION:**

H.R. 50 was introduced on January 3, 2017, and referred to the Committee on Oversight and Government Reform. The committee held a mark-up on March 15, 2018, and the bill was reported by a vote of 20-10.

#### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not available.

#### **CONSTITUTIONAL AUTHORITY:**

According to the bill's sponsor: "The authority to enact this bill is derived from, but may not be limited to, Article I, Section 8, Clause 3 of the United States Constitution, and Article I, Section 8, Clause 18 of the United States Constitution."

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